

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)

SCOTT G. DAY,)

Former President of Stanwell Mortgage,)
a division of Tracy Bank, F.S.B., and)
a director of)

Tracy Federal Bank, F.S.B.,)
Tracy, California.)
(OTS No. 07903))
_____)

Order No.: SF-02-001

Date: January 15, 2002

STIPULATION AND CONSENT TO THE
ISSUANCE OF AN ORDER TO CEASE AND DESIST

WHEREAS, the Office of Thrift Supervision (OTS), based upon information derived from the exercise of its regulatory responsibilities, has informed Scott G. Day (DAY), former President of Stanwell Mortgage, a division of Tracy Federal Bank, F.S.B. (Tracy), and a director of Tracy, that grounds exist to initiate an administrative cease and desist proceeding against him pursuant to 12 U.S.C. §§ 1818(b);¹ and

WHEREAS, DAY desires to cooperate with the OTS and to avoid the time and expense of such administrative proceeding and, without admitting or denying that such grounds exist, or the

¹ All references to the United States Code (U.S.C.) are as amended, unless otherwise indicated.

Scott G. Day
Tracy Federal Bank, F.S.B.
Stipulation to Cease & Desist

Findings of Fact or opinions and conclusions of the OTS, except as to Jurisdiction, paragraph 1, below, which is admitted, hereby stipulates to the following:

1. Jurisdiction.

(a) Tracy is a "savings association" within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4). Accordingly, it is an "insured depository institution" as that term is defined in 12 U.S.C. § 1813(c);

(b) Day was the former President of Stanwell Mortgage, a division of Tracy, and a director of Tracy and is an "institution-affiliated party" as that term is defined in 12 U.S.C. § 1813(u), having served in such capacity within 6 years of the date hereof (see 12 U.S.C. § 1818(i)(3)); and

(c) Pursuant to 12 U.S.C. § 1813(q), the Director of the OTS is the "appropriate Federal Banking agency" to maintain an administrative a cease and desist proceeding against an institution-affiliated party. Therefore, DAY is subject to the jurisdiction of the OTS to initiate and maintain a cease and desist proceeding against him pursuant to 12 U.S.C. § 1818(b). The Director of the OTS has delegated to the Regional Director of the West Region of the OTS or his designee (Regional Director) the authority to issue cease and desist orders where the individual has consented to the issuance of the order.

2. OTS Findings of Fact. The OTS finds that Day, as head of Stanwell Mortgage, caused Stanwell Mortgage to engage in unsafe and unsound practices and to violate 12 C.F.R. § 563.172, when he caused Stanwell Mortgage to use financial derivatives to hedge Tracy's mortgage pipeline in an unsafe and unsound manner that exposed Tracy to increased risk and caused Tracy to suffer a large financial loss due to the aggressive hedging strategy. DAY also

caused Tracy to violate 12 C.F.R. §§ 562.1 and 563.172 by failing to maintain accurate and complete records regarding Tracy's financial derivative activities. Finally, DAY breached his fiduciary duty to Tracy when he made use of approximately \$40,000 in Tracy's funds for his own personal benefit for a period of five days, by permitting Tracy to transfer said funds to Intermountain Mortgage, the former owner of Stanwell Mortgage.

3. Consent. DAY consents to the issuance by the OTS of the accompanying Order to Cease and Desist (Order). DAY further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.

4. Finality. The Order is issued under 12 U.S.C. §§ 1818(b) and 1818(u). Upon its issuance by the OTS, it shall be a final order, effective and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i)(1).

5. Waivers. DAY waives the following:

(a) the right to be served with a written notice of the OTS's charges against him as provided by 12 U.S.C. § 1818(b);

(b) the right to an administrative hearing of the OTS's charges against him as provided by 12 U.S.C. § 1818(b);

(c) the right to seek judicial review of the Order, including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order;

(d) any and all claims against the OTS, including its employees and agents, and any other governmental entity for the award of fees, costs or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law, the Equal Access to Justice Act, 5 U.S.C. § 504, or 28 U.S.C. § 2412; and

(e) the right to assert this proceeding, his consent to issuance of the Order or the issuance of the Order as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity;

6. Indemnification. DAY represents that he has not received, directly or indirectly, any sums from Tracy for the purpose of indemnifying or reimbursing him for any expenses incurred by him in connection with the OTS investigation. DAY shall neither cause nor permit Tracy (or any successor institution, holding company, subsidiary or service corporation thereof) to incur, directly or indirectly, any expense for any legal or other professional services rendered to DAY relative to the negotiation and issuance of the Order, nor obtain any indemnification (or other reimbursement) from Tracy (or any successor institution, holding company, subsidiary or service corporation thereof) with respect to such expenses. In the event that any such payments are received by or on behalf of DAY in connection with this action, DAY agrees promptly to notify the OTS of the receipt of such payments and to return such payments without delay to Tracy (or the successor institution, holding company, subsidiary or service corporation thereof).

7. Other Governmental Actions Not Affected. DAY acknowledges and agrees that the consent to the issuance of the Order is for the purpose of resolving this OTS enforcement matter only, arising from the OTS Findings of Fact set forth in paragraph 2 herein, and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any other actions, charges against, or liability of Day that may be or have been brought by another governmental entity.

8. Agreement for Continuing Cooperation. DAY agrees that, at the OTS's written request, on reasonable notice and without service of a subpoena, he will provide discovery and testify truthfully at any deposition or at any judicial or administrative proceeding related to any

investigation, litigation, or other proceeding maintained by the OTS relating to Tracy, its holding company, service corporation or subsidiaries or its institution-affiliated parties, except that Day does not waive any privilege against self-incrimination under the Fifth Amendment of the United States Constitution or any attorney-client privilege. If DAY invokes his privilege against self-incrimination under the Fifth Amendment of the United States Constitution and the OTS obtains a grant of immunity pursuant to 18 U.S.C. § 6001 et seq., DAY agrees, consistent with any such grant of immunity, to provide discovery and testify truthfully at any deposition and at any judicial, administrative, or investigative proceeding on the matter for which immunity is given. Finally, in connection with any testimony provided by Day at the request of the OTS, Day will be reimbursed reasonable travel expenses pursuant to the OTS travel policy in effect at the time.

9. Miscellaneous.


- (a) The construction and validity of this Stipulation and the Order shall be governed by the laws of the United States of America;
- (b) All references to the OTS in this Stipulation and the Order shall also mean any of the OTS' predecessors, successors, and assigns;
- (c) The section and paragraph headings in this Stipulation and the Order are for convenience only, and such headings shall not affect the interpretation of this Stipulation or the Order;
- (d) The terms of this Stipulation and the Order represent the final written agreement of the parties with respect to the subject matters hereof, and constitute the sole agreement of the parties with respect to such subject matters; and

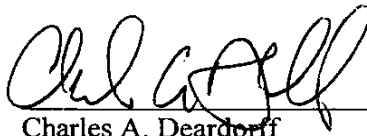
(e) This Stipulation and the Order shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Director, Regional Director, or other authorized representative.

WHEREFORE, DAY executes this Stipulation and Consent to the Issuance of an Order to Cease, intending to be legally bound hereby.

Accepted by:

OFFICE OF THRIFT SUPERVISION

By: 
SCOTT G. DAY


Charles A. Deardorff
Regional Director
West Region

Dated: 12/21/01

Dated: 1/15/02

(s day CD stip2 c:mk:tracy)

Scott G. Day
Tracy Federal Bank, F.S.B.
Stipulation to Cease & Desist

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)

Order No.: SF-02-001

SCOTT G. DAY,)

Date: January 15, 2002

Former President of Stanwell Mortgage,)
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Tracy Federal Bank, F.S.B.,)
Tracy, California.)
(OTS No. 07903))
_____)

CONSENT ORDER TO CEASE AND DESIST

WHEREAS, Scott G. Day (DAY) has executed a Stipulation and Consent to the Issuance of an Order to Cease and Desist (Stipulation); and

WHEREAS, DAY, by his execution of the Stipulation, has consented and agreed to the issuance of this Consent Order to Cease and Desist (Order) pursuant to 12 U.S.C. § 1818(b).¹

WHEREAS, the Director of the Office of Thrift Supervision (OTS) has delegated to the Regional Directors of the OTS the authority to issue an Order to Cease and Desist on behalf of the OTS where DAY has consented to the issuance of the Order.

¹ All references to the United States Code (U.S.C.) are as amended, unless otherwise indicated.

**NOW THEREFORE, IT IS ORDERED THAT WHILE SERVING AS AN
INSTITUTION-AFFILIATED PARTY OF A BANKING INSTITUTION, DAY SHALL:**

Cease and desist from engaging in financial derivative transactions that increase the risk exposure of the Banking Institution, contrary to regulations and safe and sound practices. Further, DAY shall not use the Banking Institution's funds for his own personal benefit.

AND IT IS ALSO ORDERED THAT:

1. Adequate Documentation.

Whenever DAY is acting as an Institution-Affiliated Party of a Banking Institution with any responsibility for financial derivative transactions, DAY shall cause the institution to maintain accurate and complete records of all financial derivative activities.

2. Notice to OTS.

Prior to accepting any position as an Institution-Affiliated Party, DAY shall provide Notice to the OTS of his intention to accept a position in a Banking Institution.

3. Responses to Requests.

DAY shall promptly and appropriately respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

4. Definitions. For purposes of this Order and the Stipulation incorporated herein:

- (a) "Banking Institution" refers to any and all of the following: any "insured depository institution" as that term is defined at 12 U.S.C. § 1813(c)

(including but not limited to banks and savings associations); any direct or indirect subsidiary of an insured depository institution, whether wholly or partly owned; any "insured credit union" within the meaning of 12 U.S.C.

§ 1752(7); any "savings and loan holding company" within the meaning of 12

U.S.C. § 1467a(a)(1); any "bank holding company" within the meaning of 12 U.S.C. § 1841; and any direct or indirect subsidiary of any such holding companies, whether wholly or partly owned;

- (b) "Institution-Affiliated Party," shall have the meaning set forth at 12 U.S.C. § 1813(u);
- (c) Any terms used herein that are defined in other paragraphs of this Order or Stipulation shall have the meanings ascribed to them in such paragraphs; and
- (d) Except as otherwise expressly provided in this Order, any terms used herein that are defined in the Home Owners' Loan Act or the Federal Deposit Insurance Act shall have the meanings ascribed to them in said statutes. See, e.g., 12 U.S.C. § 1813.

5. Notice. Any notice to the OTS required under this Order shall be provided to the following address:

Regional Director, West Region
Attn: James A. Hendriksen
Regional Enforcement Counsel
Office of Thrift Supervision
Post Office Box 7165
San Francisco, CA 94120-7165
Facsimile No.: (650) 746-7002

6. Stipulation. The Stipulation is made a part hereof and is incorporated herein by this reference.

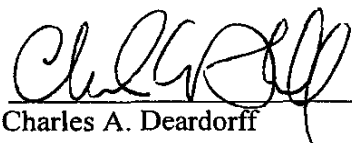
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7. Effectiveness of Order. This Order shall become effective on the date it is issued, as shown in the caption hereof. This Order shall remain in effect until it is terminated, modified, or suspended, which may occur only by formal written action of the OTS, acting by and through its Regional Director, or other authorized representative.

OFFICE OF THRIFT SUPERVISION

By: 
Charles A. Deardorff
Regional Director
West Region

(s day CD ord2 c:mk:tracy)

Scott G. Day
Tracy Federal Bank, F.S.B.
Consent Order to Cease & Desist